

2466

A

Tithing Table,

S H E W I N G

(By Way of *Analysis*)

Of What Things TITHES are
or, are not Due, either

By { COMMON LAW,
C U S T O M, or
P R E S C R I P T I O N.

By *W. BOHUN* of the *Middle-Temple*, Esq;

In the SAVOR:

Printed by E. and R. NUTT, and R. GOSLING,
(Assigns of E. Sayer, Esq;) for J. Brotherton,
J. Hazard, W. Meadows, T. Cox, W. Hinch-
cliffe, W. Bickerton, T. Alley, S. Tusten,
L. Gilliver, and R. Millock. 1732.

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A

Shipping Calendar

THE

(By Way of Analysis)

Of Various Things, Tides, etc.

Other



By the
Prescription

By the Council of the Admiralty, etc.

In the Year

Printed by E. and R. Norton, and R. Gossling,
Printers of the Admiralty, at the Admiralty Office,
Whitehall, London. 1794.

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THE
PREFACE.

TO give the clearer Idea of the ensuing Tract, it may be Necessary in the first Place to acquaint the Reader with the Grounds and Motives, which induced the Author to compose and publish it.

'Tis now about two Years since he first published a Treatise, entitled,

THE PREFACE.

The Law of Tithes; in the Composing whereof, he was often forced to make use of Transcripts and Extracts from other Writers, either in order to correct their Errors, or to clear up some doubtful and discordant Opinions, which rendred that Work more prolix, than at first intended.

But notwithstanding such Prolixities, and perhaps some Repetitions in that Work, the World (or its better Part) hath received the Author's good Intentions, and Endeavours there-
I in,

THE PREFACE.

in, with a generous Benevolence.

And as many of the Reverend Clergy, and Learned Laity, have since honoured the Author, with perhaps too Elegant Encomiums on that Work; so he in Return thinks himself obliged by the Ties of Gratitude, and a sincere Respect, to tender them herein a contracted Scheme of that more enlarged Ichthyography.

For, having lately seen a small Pamphlet, Printed Anno 1635, and entitled a Tithing Table; our
Author

THE PREFACE.

Author could not but approve both of its useful Method, and beneficial Design; tho' the Work it self falls vastly short of the Mark it aimed at, as being founded chiefly on Opinions and Decisions of the Canon and Civil Law, which can never render the Comers thereto perfect, or be of present Use to guide us in determining the Rights of Tithes, now generally confessed to be mere Lay Chattles, and consequently determinable according to the Rules prescribed by our Common and Statute Laws. Our

THE PREFACE.

Our Author therefore, in composing the ensuing Table, has only relied on the Rules and Authorities of our Temporal Lawstouching those Rights, which he has here collected and reduced to an analytical Method or Table: Wherein the Reader will find the whole Genus of Tithes, so far distributed into its various Species, and those subdivided into such proper and particular Differences, as will not only comprehend the several Individuals whereof Tithes may be demanded,

The PREFACE.

*ded, but also very much
conduce to assist the Me-
mory, and direct the
Judgment in the whole
Doctrine of Tithes, shew-
ing for what Things they
are or are not due, either
by the Common Law, or
Statute Law, or by Cu-
stom, or Prescription.*

*N. B. For L. T. in this
Tract, read Law of Tithes.*

A

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A

Tithing Table.

S H E W I N G

What Things are tithe-
able, or not tithable, &c.

The Contents of the following
Sections, viz.

TITHES are to be considered as they
arise or grow due.

I. **D**E Terra Firma, or
from the Land itself,
in Respect of its Na-
ture or Quality; as Arable, Mea-
dow, Pasture, Abbey Lands,
Antient Demefne Lands, and Lands
B Barren,

A Litching Table, &c.

Barren, Fallow, Fenny, Heath, Headlands, Woodlands, Forests, Parks, Warrens, Wastes, Curtillages, Orchards, Gardens, &c.

2. *De Visceribus Terra*, or what is dug out of the Earth, or made of it; as Mines of Silver, Tin, Copper, Lead, Coal, or Quarries of Stone, Slate, Sand, Marle, Fullers-Earth, Turves, Lime, Bricks, Tiles, Potters Ware, Tobacco-Pipes, &c.

3. *De Frugibus Terra*, or Harvest-Fruits of the Earth; as the several Kinds of Corn and Grain, (*viz.*) Wheat, Rye, Barley, Oates, Beans, Peas, Fetches, Tares, &c.

4. *De Herbagio Agri*, or Herbage of the Field; as Grass, Hay, Clover, Cinquefoil, &c. Hemp, Flax, Hops, &c.

5. *De Usufructibus Telluris*, or the Usufructuary Profits of Lands; as Agistments, Sheep-folds,

A Tithing Table, &c.

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foldes, Sheep-walks. *Quare* Bowling Greens, &c.

6. *De Arboribus & Sylva Cadua*, of Trees and Underwood; either for Timber or Firing, Hedging, Fencing, &c. Oak, Ash, Elm, *Sylva Cadua*, &c. Apple-Trees, Pear-Trees, Plumb-Trees, Cherry-Trees, &c.

7. *De Fructibus Arborum*, or Fruits of Trees; as Apples, Pears, Plumbs, Cherrys; so of Acorns and Mast for feeding Hogs, &c.

8. *De Herbis, Seminibus & Radicibus*, or Garden-Seeds, Herbs and Roots; as Cabbages, Colly-flowers, Parsly, Spinage, Leeks, Onions, Carrots, Parsneps, Potatoes, Turneps, &c. And also Saffron.

9. *De Pullis & Ovis*, of Younglings and Eggs; as young Lambs, Calves, Pigs; so of Swarms of Bees, Geese, Ducks, Honey, Wax, &c.

B 2

10. *De*

A Tithing Table, &c.

10. *De Lacte, Lana & Pellibus*, of Milk, Wool, and Woolfells; and here of Fleeces, Shorlings, Toppings, and the Skins of Cattle, &c.

11. *De Bestiis Feris, Volatilibus & Piscibus*, of wild Beasts, &c. as Deer, Hare, Conies, Bees, Fish, wild Fowl, &c. and here of Hunting, Fishing, and Fowling.

12. *De Domibus & Molendinis*, of Houses and Mills; and herein *de Columbariis, Aviariis, & Vivariis*, or of Dove-Houses, Decoys, Fish-Ponds, Hog-Sties, &c.

13. *De Mercatoribus, Artificiis & Servis*, or the Profits made by Tradesmen, Artificers, and Servants.

These

A Tithing Table, &c.

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These are the Heads of the following Table, which 'tis conceived will comprehend All the particular Species of Things whereupon any Doubt or Question may arise, touching the Payment of Tithes; each of which we shall treat of in the Order above specified.

N. B. *The Letters L. T. in the following Sections, signify, The Law of Tithes.*

SECT.

S E C T. I.

De Terra Firmâ, or from the Land itself, in Respect of its Quality or Nature.

See the
Law of
Tithes, c. 6,
and 7, 17,
20. & *ib. p.*
30, 195, 286,
287, &c.

1. **L**AND abstractedly considered as mere *Earth* or *Soil*, is not Tithable.

2. But is only Tithable by Reason of some *annual Product* arising therefrom.

3. As *Arable Land*, by Reason of its Product of *Corn* or *Grain*.

4. *Meadow Land*, by Reason of its producing *Grass* and *Hay*.

See hereaf-
ter Sect. 4.
No. 24. and
Sect. 5.

5. And *Pasture Land*, by Reason of its feeding and foddering **Cattle**,

See Law of
Tithes 196,
197.

6. *Antient Demefne* Lands, being originally appropriated for Support of the King and his Government,

vernment, were (formerly) not Tithable.

7. And the like of *Forests, Chases, Parks, &c.* See L. T. 197, 198, &c. 228, &c.

8. So of all *Wood-lands* preserved or approved for railing Timber-Trees. *ib.* 197.

9. And it seems, till the Statute of *Sylva Cadua*, no Tithes were by our Law payable for any *Wood-lands*, but such as were yearly cut, &c. See hereafter Sect. 6. *ib.* 65.

10. *Fallow Land* is not Tithable, because the letting it lie Fresh or Fallow, improves the Land. L. T. 41.

11. But if it be kept Fallow beyond the usual Course of Husbandry, the Parson ought to have a Recompence for the Tithes. 1 Roll. Abr. 642.

12. *Barren, Heath, or Waste Lands*, which are so of their own Nature, and not by Accident or Ill Husbandry, are not Tithable. See L. T. 197, 287, 288. Danv. Abr. Tit. Dismes, 589.

13. And

A Tithing Table, &c.

13. And if such *Lands* are improved and made good Land, yet no Tithes shall be paid for them for the first seven Years; by Stat. 2, 3, E. 6. c. 13.

L. T. 291.

14. Yet if any Tithes have been before customably paid for such *Lands*, the same Tithes, and no more, shall still (during seven Years) be paid for those *Lands* by same Statute.

15. Of Fenny and Thorny *Lands*. See *Law of Tithes*, 292, 293, 294.

See L. T.
292, 293.

16. But Note; *Lands* gained from the Sea, (and *Wood-lands* converted into Arable) are not within this Statute.

1 Roll. Abr.
655. 3 Cro.
94.

17. Tithes of *Extraparochial Lands* belong to the King. See *Law of Tithes* 173; and *Forest Lands*, tho' lying within a Parish, shall pay no Tithes while in the King's Hands; *contra*, (as 'tis said)

I

when

A Tithing Table, &c.

9

when in the Hands of a Subject.
(*Sed Quare.*)

18. So I conceive, even in a Subject's Hands, they ought to be *Tithe-Free*; except by *Custom*. See L. T. 214, 215.

19. But if a Forest, within a Parish, &c. be disafforested, and made arable, &c. it shall pay Tithes. 2. *Ibid.* L. T. 42.

20. *Headlands*, *Balkes* or *Bawkes*, (*i. e.* such as are left for turning the Plough) are not Tithable, except left larger than usual. 1 *Roll. Abr.* 646.
2 *Inst.* 652.

21. *Curtilages* and *Paddocks*, or Places where *Furzes*, *Broom*, &c. grow, for the Use of the *House*, or *Husbandry*, as *Fire-boots*, *Hedge-boots*, *House-boots*, &c. pay no Tithes, except the *Furzes*, or *Faggots*, &c. there growing, are fold. See L. T. 50, 51, 52.

C

22. Nur-

Danv. Abr.
585, 614.

22. *Nurseries* shall pay Tithes if the Owners dig them up, and sell them into another Parish, viz. If the Owner digs them up, he pays the Tithe; but if he sells them Standing, and the Vendee takes them up, the Vendee shall pay the Tithe.

2 *Inst.* 652.

23. *Orchards* pay Tithe of *Fruit sold*. And if Orchards are sown with *Grain, &c.* and the *Produce* sold, Tithe is also due for that: And (some say) of the *Grass* also, if *sold*.

See L. T.
66, 67.

24. *Gardens* are also Tithable, if the *Produce* thereof is sold, i. e. Tithes in Kind are due: For Parsly, Annise, Mint, Rue, Cummin, &c. Of which see *Sect. 8*.

25. And Note; these four last Articles seem to me to be small Tithes, as all other Things are that

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26. Touching Abbey and Monastery Lands, *Ec.* See *Law of Tithes*, c. 6. and c. 7. *per Totum.*

27. Of Lands converted,
ibid. 227.

S E C T. II.

De Visceribus Terræ, i.e.

*What is dug out of the Bowels of the Earth, or made of it.*See L. T. 17,
&c.

1 Mod. 35.

2 Mod. 77.

2 Vern. 46.

I. **W**HAT is made of the Earth, or dug out of the Bowels of it, is of Common Right, not Tithable, but may be so by Custom. Ergo,

F. N. B. 53.

2 Inst. 651.

2. Mines of Silver, Copper, Tin, Lead, &c. are not Tithable of Common Right; but in some Places Custom has allowed it.

See Degg.
235, and
265.

3. And so of Lead-Oar, in Darbyshire, a customary Tithe is paid.

1 Chan. Ca.
272, 282.

4. And the like it seems of Tin-Oar in Cornwall. Quare L. T. 17,

2 Inst. 651.

5. But for Chalk, Clay, Coal, Gravel, Marle, Fullers Earth, Sand,

A Tithing Table, &c.

13

Sand, Tobacco-Pipe-Clay, and the like, (being all dug out of the Earth, and of the same Quality) no Tithes are due. ^{1 Mod. 35.}
^{2 Mod. 77.}

6. For such Things are Part of L. T. 17. the Freehold, and not Annual.

7. And the like Reasons may ^{2 Inst. 651.} be given, that Turves, and Peat, &c. are not Tithable.

8. And for the same Reasons, ^{L. T. 317,} Quarries of Stone and Slate ^{and 444.} are not Tithable.

9. So Bricks and Tiles, Potters Vessels, Lime, and the like, are ^{2 Inst. 651.} not Tithable, they being made ^{1 Cro. 1.} of the Substance of the Earth, ^{Degg. 267.} and no Annual Increase.

10. And it has been a Rule, ^{11 Co. 160.} *Ubi non est Annua Renovatio, ibi Decima non debent solvi*; i.e. where there is no yearly Renewing, there no Tithes are due.

11. And therefore, says Sir S. ^{1 Roll. 636.} Degge, (very truly) no Tithes ^{D. 1. Dr.} shall ^{and St. 174.} ^{Moor 908.} ^{Cro. Eliz.}

A Tithing Table, &c.

shall be paid for *Stones* gotten out of *Quarries*, *Pit-Coals*, *Turves*, *Slates*, *Bricks*, *Quarrels*, *Tiles*, *Earthen Pots*, nor of any Thing made of Earth; nor of Marle or Lime, &c. nor of Tin, Lead, Copper; or of other *Metal* gotten out of the Ground.

Cumb. 404.

6 Mod. 223.

12. And yet, by *Custom*, Tithes of such Things may be due and payable. *Quare*, If such a Custom is founded on Reason?

Lev. 179.

13. Also, no Tithes shall be paid of *Salt*, of common Right, for a like Reason: And yet by Custom, it seems a Tithe may be thereof.

14. Note; The Petition of the Commons in Parliament, 5 H. 4. against Clergymens exacting Tithes of *Stone*, *Slate*, &c. See *L. T. 317.*

S E C T.

S E C T. III.

De Frugibus Terræ, i.e.
of Harvest Fruits, of
Corn and Grain.

I. **A**LL Harvest Corn, as See L. T. 153 to 169.
Wheat, Rye, Barley,
Oates, &c. is of common Right,
Tithable to the Parson. See the
Law of Tithes, 30, 32, &c.

2. And the Parishioner is to
cut it down, bind it in Sheaves,
and set it forth. 1 Roll. ab. 644.
L. T. 177,
&c.

3. And if he will not sow his
Land, tis said the Parson may
have an Action (of the Case)
against him.

4. All Corn and Grain, as 1 Sid. 283.
2 Vent. 48.
L. T. 177,
&c.
Beans, Pease, Pulse, (and Fetches)
are Tithable, according to the
Custom of the Place.

5. These

A Tithing Table, &c.

L. T. 177.
 &c.

5. These are usually Tithed by the tenth Shock, Sheaf or Cock; but Custom may warrant another Manner of Tithing.

L. T. 186,
 187, 188.

6. The *Parson* or his *Servant* may come on the Land to see them set forth.

7. And *both* may come to take them away.

Danv.
 Dismes
 614.

8. If Corn, &c. is sold standing, the Buyer shall pay the Tithes.

L. T. 189.

9. But if sold after Severance, the Seller must pay them.

10. Yet some hold, that in the former Case the Parson may sue either the Buyer or Seller.

See L. T.
 c. 2.

11. And these Tithes being *predial*, (i. e. arising yearly from the Land) are due in Kind of common Right. See *Law of Tithes* 17. 4 *Mod.* 341, 344.

L. T. 207.
 210.

12. And no Agreement between a Parson and a Parishioner
 to

to the Contrary can bind, but for the Parson's Incumbency only.

13. But a Custom herein often prevails against common Right. *See Law of Tithes 32.*

14. So of common Right, the Parishioners ought to set out the tenth Part, and bind it in Sheaves, or set it in Heaps or Cocks. *Ibid. 32.*

15. And if he does it not, the Parson may sue him for not doing it. *Ibid. see Latch 125.*

16. But here also the Custom of the Place must be the Rule. *L. T. p. 32.*

17. And the Parishioner having set them forth, &c. is not bound to watch them. *Ibid. 33.*

18. But the Parson, at his Peril, is to take them away in Time. *Ibid.*

19. Or else he may be sued as a Trespassor. *Ibid.*

D

20. And

A Tithing Table, &c.

20. And see there *particular Customs* of Tithing and setting forth Tithes.

21. And Page 34, 35. of Prescriptions against paying such Tithes in particular Cases; as cutting green *Tares*, *Fetches*, &c. for the feeding of Cattle, &c.

22. Of Grain or Corn sown on *Headlands*, &c. And so of Peas, Beans, &c. eaten in a Man's own House, (and not sold) no Tithes are due. See *ibid.* 36.

23. Nor of Rakings, &c. See there 38, 39. *Quare*; Nor of Stubble, *ibid.* 41.

24. Also the Parson shall not have Tithes both of Corn and of the feeding of Sheep taken in for Manure of the same Lands. *Ibid.* § 1 *Mod.* 216.

25. And Note; These Harvest-Fruits, when sown in large Fields,
are

A Tithing Table, &c.

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are allowed to be *great Tithes*; and consequently belong to the Parson. See *L. T. 72, 73, &c.*

26. But if sown or set in *Gardens*, or small Parcels, I conceive they may well be denominated small Tithes; which belong to the Vicar. *L. T. 72.*

27. Tithes are due of Self-sown Corn. *Law Tithes 41.*

D₂ SECT.

S E C T. IV.

De Herbagio Agri, *or*
Herbage of the Field.

See L. T.
42 to 49.

1. **B**Y these I intend *Grass*,
Hay, *Clover*, *Cinquefoil*,
and other annual *Productions*
usually applied to the feeding of
Cattle.

See 2 Inst.
652.
L. T. 42.

2. And these, as the Former,
are in their Nature, *great Tithes*,
and payable of common Right
to the Parson of the Parish.

3. Grass mowed, is usually
Tithable by Payment of the tenth
Cock.

See L. T.
43, 46. &c.

4. But in this also the Manner
of Tithing is governed by the
Custom of the Place. See L. T.
46, 48, &c.

See L. T. 43.

5. And if *Grass* is cut down
and carried away in Swaths (or
Hay)

Hay) for necessary Sustenance of the Owner's Plough, (or Pail) Cattle, Cart-Horses, &c. if this be done without Fraud, I conceive no Tithe is due.

6. For the Parson has a Benefit by the Labour or Produce of the Cattle (as Milk, &c.)

7. But *Grass* or *Herbage*, eaten by barren Cattle kept for Sale, is Tithable;

8. Because such Cattle yield no Profit to the Parson.

9. The Herbage of Ground whereon Corn has grown the same Year, and which hath already paid Tithes for that Year, is not Tithable. 2 *Inst.* 652.

10. But as to *Grass* or *Herbage* Eaten, or Fed, see more *infra* Sect. 5.

11. Hay is usually Tithable by Payment of the tenth Cock. *See L. T.* 46, 48.

12. And

A Tithing Table, &c.

12. And 'tis said, if the Custom is not otherwise, the Parishioners shall make the Grass into *Hay* for the Parson's Tithe. *See Law of Tithes* 48.

13. But the Custom sometimes is to make it only into *Grass Cocks* or perhaps *Swaths* only.

1 Roll. Ab.
643, 647.

14. And in that Case the Parson may make it into *Hay* on the same Land.

15. And may go over the same Land to make it, and carry it away, &c. *L. T.* 49.

16. And may break down any Gate or Inclosure erected to obstruct him. *See St. 2 E. 6. c. 13.*

17. Tis sometimes the Custom, and allowed to be good, to measure out the tenth Part of the *Grass* as it grows; and the Parson is to mow it, &c. *Hob.* 250.

18. And

18. And that if the Ground is so rich that there are two Crops in one Year, the Parson shall have the Tithe of both. *Q. ibid.*

19. But an *After-Mowth*, or an *After-Pasture*, usually pay no Tithes, unless by Custom. See 2 *Inst.* 621, 652, *acc.* 1 *Roll. Abr.* 640. *contra.* N. B. L. T. 43, 45.

20. For it is only the Remainder of the *Grass* which was before Tithed. *Ibid.*

21. 'Tis also said, that Tithes shall be paid of *Grass* growing in *Orchards*. 2 *Inst.* 652.

22. And that 'tis no good *Modus*, That the Parishioner hath spent all his *Hay* on his Beasts of Plough, (and Pail). See 1 *Roll. Abr.* 646.

23. And yet it seems such a Custom may well be supported with good Reason. *Vid. supra* 5.

24. The

A Tithing Table, &c.

24. The Pasturage of a riding Nag, or a hunting Horse, or other Nag, kept by the Owner, for his Pleasure, pays no Tithes. *1 Roll.*

Abr. 641, 142. *L. T.* 94, 101.

25. *Contra* it seems, if let out for Hire, or kept for Sale. *L. T.* 102.

26. So the Pasturage of any Horse, or other Beast, kept for Plough or Cart, pay no Tithes, if imployed about the same Land or Farm. (*Contra*, if otherwise. *Q.*)

27. And if *Hay* is mown to feed Deer, &c. it seems no Tithes are due. (*Per Windham.*) *Law of Tithes* 36.

28. Parks, &c. Where only Deer or wild Beasts feed, pay no Tithes of the *Herbage*, (unless by Custom.) *Contra*, if agisted.

29. But of these Matters see more fully, *L. T.* p. 41 to 49.

30. And see there touching Tithes of *Hemp* and *Flax*, *Chap. 2.* p. 69, 70. &c.

S E C T,

SECT. V.

De Usufructibus Terræ;
or, The Usufructuary
Profits of Land.

UNDER this Section I rank *Agistments* (where-
of something in the foregoing
Section) and also *Sheepwalks*,
Sheepfolds, *Bowling-Greens*, &c.

See Law of
Tithes 46,
94, 95, 100
&c.

2. Tithes are due for *Agist-
ments*, i. e. The feeding of Cat-
tle on Pasture Lands, &c.

3. But with this Proviso, That
the Land pay no other Tithe
that Year. See *Danvers* 600,
601.

4. For if the Land, &c. hath
already paid Tithes, no Tithes
are due for the *Agistments* in
that Year. *Q. F. N. B.* 53.

E

5. Also

A Litching Table, &c.

5. Also the Cattle must be agisted for *Hire*, and not Fed for Plow or Pail, or Labour, &c. *L. T.* 99, 105.

6. For if they are so fed, or are otherwise profitable to the Parson, either by the *Tithe* of their Milk, Wool, Labour, &c. no Tithes are due for the *Agistment*.

Note also the following Rules
as to Tithes of *Agistments*.

7. If the Ground is Let to a Stranger by the Year, the 10th Part of the Money receiv'd is Due.

Vide ut supra.

8. But if otherwise, Respect is to be had to the Number of the Cattle, and their Time of Feeding in that Land.

See *L. T.*
78, 93, 100,
103.

9. If the Owner eats it all with unprofitable Cattle, the 10th Part of the Value of the Land is payable.

10. But

A Tithing Table, &c.

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10. But *Custom* or *Prescription* do often herein direct other kinds of Payment.

See Law of
Tithes 104,
112, 115,
168, 178,
220, &c.

11. If they are *Guest Cattle*, (*i. e.* taken in for Hire) either the Owner, or Occupier of the Land, may be sued for the Tithes. *Danv.* 614.

12. But regularly it ought to be the Occupier of the Land.

13. Sometimes a Parishioner will *agist* the Land till *May*, &c. and then *Hayne* it, and give the Parson the Tithe of the *Hay* only.

14. But this being done to defraud the Parson, the Parishioner seems liable to an Action.

15. And it seems reasonable, That in such a Case the Tithes ought to be paid in Proportion, as well for the *Agistments* as the *Hay*.

E 2

16. Where

A Tithing Table, &c.

16. Where one has paid Tithes of the Wool of Sheep, &c. He shall not pay Tithes for their Herbage. *Law of Tithes*, 89, 91, &c.

17. For then he should pay Tithes twice of one Increase. *Ibid.*

18. And see there 93, 100, 103, &c. of the Tithes of agisting Barren Cattle, &c.

19. And *ibid.* 99. No Tithes are due for agisting of Cattle bred for Plow or Pail.

20. Nor of the Feeding of Saddle Horses, Hunting Horses, &c. *Ibid.* 101, 102.

21. Nor of Agistments in After-Grass or After-Pasture. *Ibid.*

104.

22. No Tithes seem to be due for Sheepwalks, Sheepfolds, &c.

23. For

23. For the Parson has a Benefit by their manuring the Land.

24. Nor any for Bowling-Greens, or other Places of Recreation. Q.

See more of *Agistments* in the *Law of Tithes, Chap. 3.*

See the
Law of
Tithes, pag.
24 to 63.
Vol. 643.

1. *TIMBER TREES, Oak, Elm, Ash, &c. are not Titheable of common Right.*
2. *Not Trees growing in Forests (Parks) or Chales.*
3. *And where the Body is discharged, the Branches, Loppings,*

Ec. are also discharged.
4. *And so are the Shoots, Ec. springing from the Root, and also the Bark of such Trees. 11 Co. 49.*
5. *Also, Trees growing upon waste in Fields, or Inclosures of Land, by the Common Law are to pay*

SECT.

And

3

S E C T. VI.

De Arboribus & Silvis
cæduis, or of Trees and
Underwoods, &c.

See the
Law of
Tithes, pag.
54 to 63. 2
Inst. 643.

1. **T**IMBER Trees, Oak,
Elm, Ash, &c. are not
Tithable of common Right.

2. Nor Trees growing in Forests
(Parks) or Chafes.

3. And where the Body is dis-
charged, the Branches, Loppings,
&c. are also.

4. And so are the Shoots, &c.
springing from the Root, and also
the Bark of such Trees. 11 Co. 49.

5. Also, *Thenesii Agrorum* ;
i. e. Trees growing *sparsim* with-
in Fields, or Inclosures of Land,
by the Common Law are to pay
no Tithes. See Degg. 239.
L. T. 60.

6. And the same Law seems to be of Trees growing in any Fences or Hedges.

7. For that they assist in preserving the Corn, Grass, &c. there growing, &c.

8. Nor are Trees that are dry, dead, or rotten, liable to Tithes.

11 Co. 49, 81.

9. For of these there is no annual Increase. 2 Inst. 643.

L. T. 58.

10. Nor are Fruit-Trees, as Apple-Trees, Pear-Trees, Cherry-Trees, liable. Q. 2 Roll. 83.

11. Because the Parson has the Tithe of their Fruit.

12. So *Aspen Trees*, *Beach-Trees*, &c. where used for Timber, are not liable to Tithes, per Stat. 45 Ed. 3. c. 3. *De Sylva Cadua*.

13. And even *Hazle*, *Holly*, *Willow*, *Maple*, *White-Thorn*, &c. tho' under 20 Years Growth, may be

A Tithing Table, &c.

be discharged of Tithes. *Danv. Dismes* 589. But see *L. T.* 57.

14. *Viz.* Where such Wood is used for Building by the Custom of the Country. *Ibid.*

15. Nor are Tithes of Wood due of Common Right, nor by the Common Law, as some have held. But for this see *The Law of Tithes*, from Page 54 to 65; especially 65, and 312, to 317.

16. As to *Underwoods* (properly the only *Sylva Cadua*) Tithes are generally due. *L. T.* 63, 312, 315, &c.

17. And if sold standing, the Tithes are payable by the Buyer. *Inst.* 642.

18. But if sold after felled, by the Seller.

19. And in like Manner the Tithe of Broom, Furze, &c. (if sold) is payable. *Law of Tithes* 52. *Danv. Dismes* 597.

20. But not if used in Husbandry, or burnt in the Owner's House, &c. *Ibid.*

21. For

A Tithing Table, &c.

33

21. For all Kinds of Boots and Estovers are Tithe-Free, i.e. House-boot, Hay-boot, Hedge-boot, Plough-boot, Fire-boot, &c.

See L. T.
51, 56.

22. Turves are not Tithable, because Part of the Freehold.

² Inst. 651.

23. Nor Fern, Rushes, Flaggs, Stubble, and the like.

Ibid. 652.
¹ Vent. 75.

24. Nor the Roots of Trees, the Trees themselves being free.

25. But perhaps by Custom, some of the above Things may be Tithable.

26. For it seems all Tithes of Wood are due by Custom only, and not of common Right.

See *Dr. and Stud. Dialogue 2. cap. 55. 13 Co. 13. and Law of Tithes, 321, &c. supra.*

27. If Wood is cut, and used for Hop-poles, (and the Parson or Vicar has the Tithe of Hops) no Tithe is due. L. T. 53.

F

28. All

A Tithing Table, &c.

28. All Staddles and Standards for Timber, are discharged of Tithes. *Ibid.* 60.

29. See and note the Petitions in Parliament against the Tithes of Wood, &c. *L. T.* 312. to 317.

SECT.

S E C T. VII.

De Fructibus Arborum;
or, The Fruits of Trees.

1. **T**H E S E Fruits must respect either Trees of the Field, as Oaks, Beech, &c.

2. Or Trees of the Inclosure in Orchards and Gardens, as Apple-Trees, &c.

3. The Fruits of the former are Acorns, Mafts, &c. commonly called *Pannage*.

4. These if they drop from the Tree, and the Swine, &c. eat them, pay no Tithes.

5. But if they are severed for feeding the Swine, &c. 'tis said they are to pay Tithe in Kind. See *Hetly* 27. Q.

A Tithing Table, &c.

6. And if gathered and sold,
to pay the Tenth of their Value.

11 Co. 49. 2 Inst. 643.

7. Where Mafts and Acorns
shall be great or small Tithes,
See *Law of Tithes*. 31.

8. The Fruits of the latter are
Apples, Pears, Plums, Cherries,
&c. See *L. T.* 31.

9. And of these Tithes in
Kind are to be paid by the
Owner, if he gathers them him-
self, for Sale, &c.

See Dr. &
Stud. lib. 2.
cap. 55.
2 Inst. 621,
652.

10. But if he sells them on
the Trees. Then either,

11. The Buyer is to pay the
Tithes in Kind.

12. Or the Seller the 10th
Part of the Value.

13. But Fruit-Trees cut down
and sold, pay no Tithes, (if
Tithe Fruit hath been paid of
them the same Year, *say some.*)

14. But I conceive they are
no way Tithable, tho' no Tithe
Fruit

Fruit hath been paid of them in the same Year.

15. Where *Apples, Pears, &c.* shall be great or small Tithes, See *Law of Tithes* 31.

16. For *Fruits and Fruit-Trees* in *Nurseries*, vide *ibid.* 61, 62, 66, &c.

SECTION

S E C T. VIII.

De Herbis, Seminibus &
Radicibus, i. e. of Gar-
den Herbs, Seeds, and
Roots.See *L.T.* 9.

1. **H**itherto of great Tithes;
we come now to minute
or small Tithes.

2. Such are all Garden Herbs;
as Mint, Parsley, Rue, Spinage,
all Pot-herbs, and many others.

Ibid. 31.

3. To these I conceive
may be added those of Saffron,
Hemp, and Flax, (if sown in
small Parcels.)

Ibid.

4. And the like may be said
of the *Seeds* and *Roots* of such
Herbs; as Annis and Cummin
Seeds, &c.

5. And so of Potatoes, Tur-
neps, Carrots, Parsneps, Leeks,
Onions, &c.

6. And

6. And so it seems of Flowers, *viz.* That all are properly small Tithes.

7. But some make a Difference between the Seed and the Herb, or Root.

8. Giving the Former to the Parson as great Tithes, and only the latter to the Vicar.

9. Tho' to me this Distinction seems not warranted by Reason.

10. For I take it, the Fruit ought to follow the Nature of the Root.

SECT.

S E C T. IX.

De Ovis & Pullis, &c. of
Eggs and Younglings;
and also of Calves,
Lambs, young Pigs,
and Cattle.

1. **T**HE Tithes of Ducklings,
and young Geese are
usually paid in Kind. *L. T. 19.*
Quare of Swans?

Ibid.

2. But the Tithes of Hens and
Turkeys, most commonly in their
Eggs.

Moor 599.

3. Yet herein the Custom of
the Place is always to be ob-
served.

See Law of
Tithes 108,
109, 138.

4. But as to Turkeys and
Swans, it seems to me, That of
common Right, no Tithes are
due, either for them or their
Eggs, &c.

I

5. And

5. And the like may be said against Tithes of Partridges, Pheasants, Pigeons, &c.

6. For all these being *Fera Naturâ*, both they and their Eggs ought to be exempted from Tithes. *Vide ibid.* 109.

7. And yet by Custom or Composition, Tithes may be paid of Pheasants and Partridges. *Ibid.* 229.

8. And of young Domestick Fowls, 'tis said a Tithes is due of common Right *L. T.* 108.

9. And that the Eggs of all Fowls, whether Domestick, or *Fera Naturâ*, are Tithable. *Ibid.* 110. *Sed Quare?*

10. 'Tis also said, that by Custom, Tithes shall be paid, even of Pigeons spent in the House. *Ibid.*

11. But I very much doubt a Mistake in that Case.

Ibid.

12. And 'tis certain, no Tithes at all are due for Pigeons, &c. unless it be by some special Custom or Agreement.

Ibid. 108.

13. But of Tame Fowls 'tis admitted Tithes are due, either of their Eggs or Young.

Ibid.

14. And where Tithes are paid of the Eggs, none are due for the Young.

15. So where Tithes are paid of the Young, none are payable for the Eggs.

See *L. T.*
108.

16. And 'tis said to be a good *Modus* to pay 30 Eggs in Lent, in lieu of all Tithes for Eggs, (and Young Fowls:) So I understand it.

17. As to Tithes of Calves, Colts, Lambs, Kids, young Pigs, &c. observe.

18. If a Man hath ten Calves, Colts, Lambs, &c. in one Year, one is due to the Parson or Vicar. *Ibid.* 76.

but 2

19. If

19. But if he hath fewer than Ten, no Tithes in kind is to be paid for that Year. *Ibid.*

20. Except a special Custom does warrant such Tithe in Kind, &c.

21. But the Parson or Vicar in such Cases, hath usually a Rate-Tithe in Money. *Ibid.*

22. Or (by Custom) carries till the next Year, and so hath a Tithe in Kind for both together.

23. The Tithes of young Cattle are said to be payable when weanable. *L. T. 79.*

24. See *Law of Tithes* 76, 77, other Customs in tithing young Cattle, and *ibid.* 100.

25. And see there 18, 110, 134. touching Bees, and their Swarms.

26. And *Note*; no Tithes are due for Cattle which are not profitable to the Owner. *Ibid.* 101.

A Tithing Table, &c.

27. So of Saddle Horses, Hunting Horses, &c. being for Pleasure only. *Ibid.*

28. *Contra* if let out for Hire, or if otherwise profitable by their Milk, &c.

29. How, and by whom the Tithes of such Cattle are payable, see *there* 102, 103.

30. And of Barren-Cattle, Milch-Cattle, Hogs, Pigs, &c. see 103 to 106.

SECT.

SECT. X.

De Lacte, Lana & Pel-
libus; of Milk, Wool,
and Skins.

1. **U**NDER the Head of
Milk, is comprehended
Cheese and Butter. *L. T. 79,*
98, &c.

2. When Cattle yield other
Profits besides their Young, such
Profits are also Tithable. *Ibid.*

3. As of the Milk, Butter, &c.
of Cows, Asses, Goats, Sheep,
&c. *Ibid. and p. 98.*

4. But as to Tithes of other
Cattle (except Cows) the Cu-
stom only must guide. *Ibid.*

5. And by Custom, a certain
Number of Cheeses may dis-
charge the Milk, &c. *Ibid.*

6. For

A Tithing Table, &c.

6. For if Tithes of Cheefe or Butter is paid in Kind, no Tithe Milk is due but by Custom.

7. For Cheefe and Butter is made by Labour, and so the Tithe not due of it self. *Ibid.* 81.

8. And when Tithe Milk is paid, no Tithe of Cheefe (or Butter) is due. *Ibid.*

9. And see there, and 81, 82. How Tithe Milk, &c. shall be paid. See also p. 97, 98.

10. Also Tithe Wool of Sheep and Lambs is to be paid to the Parson or Vicar, &c. *Ibid.* 83.

11. But this is to be proportioned to the Time they are fed in the Parish. *Ibid.*

12. *Viz.* 8 Pounds of Wool in 80, if fed there a whole Year. *Ibid.*

13. But only 4 Pounds in 80, if fed there only half a Year. *Ibid.*

14. And 2 Pounds if fed there three Months only.

15. And

15. And only the 12th Part of the Tithes, if only one Month. *Ibid.*

16. And if kept less than 30 Days in a Parish, no Tithe is due. *Ibid.*

17. 'Tis said, if the Sheep lodge in one Parish, and Feed in another, the Tithes shall be divided. *Ibid.* 89.

18. But *Quere*. For by Lodging the Land is bettered, but by feeding 'tis worfe. *Ibid.* 83.

19. See L. T. 84. how Tithes shall be paid, where only fed from Michaelmas to Lady-day, and then sold.

20. And *ibid.* 85. of a *Modus* of 10 Fleeces, and one Lamb in lieu of all Tithes.

21. *Quere ibid.* 86, 87. of the Tithes of Head, Neck, and Tail Locks, Dirty Locks, &c. *Ibid.* 88, 92.

22. And

A Tithing Table, &c.

22. And *ibid.* 88. of the Tithes Wool of Sheep, dying or being killed.

23. Also of the *Modus*, or Manner of paying Tithes Wool, see there 89, 90.

24. As of the Force of Custom and Prescription therein, see p. 90, 91, 92.

25. Paying Tithes for Milch Beasts, no Discharge of other Beasts. *Ibid.* 105.

26. As to the Skins of Cattle: *Quare* whether any Tithes are due.

27. And if so, in what manner payable.

§ E C T.

S E C T. XI.

De Bestiis, Feris, Volatilibus, & Piscibus; of Wild Beasts, Fowls and Fish; and here of Parks and Warrens, &c. and also of Hunting, Fowling and Fishing.

1. **N**O Tithes are due for Creatures *Fera Naturá*, without a Custom. L. T. 106, 109, 127, &c.

2. Therefore none are due for Deer, Hares, Conies, and the like. *Ibid.* 106, 107. See *Ibid.* 128.

3. And the like may be said of Wild Fowl, because *Fera Naturá*. *Ibid.* 107 to 110, 136.

4. And so of Fish for the same Reason. See there 110, 128 to 136.

H

5. And

A Tithing Table, &c.

5. And so of *Bees*, &c. See there 118, 106, 110, 134, &c.

6. Also *Turkeys* are not Tithable for the same Reason. 108.

7. Nor *Pheasants*, *Partridges*, &c. tho' made tame. 109.

8. Also *Pigeons* are not, especially if spent in the Family. *Ibid.* 109.

9. Yet by Custom, Tithes may be payable for *Pigeons*, &c. *Ibid.* 110.

10. So *Fish* taken in the Sea, or any River or Pond, are not of right Tithable. *Ibid.* 132.

11. And yet by Custom, a Tithe or *Modus* may be due for them. *Ibid.* & 127, 128.

12. And this, tho' the Sea lies in no Parish. *Ibid.* 129, 130.

13. Therefore a Custom to pay less than a 10th thereof is good. *Ibid.* 132.

A Tithing Table, &c.

51

14. Of Tithe of Fish taken on the *Sea-Coasts*, see the Stat. 2 & 3 Ed. 6. c. 13. *Ibid.* 130.

15. How the Tithe of Creatures *Fera Naturalia* is payable, see there, and 133.

16. Of Tithes of Deer, Hares, Conies, Pigeons, Eggs, Fish, Fowls, Chickens, &c. see there 133 to 139.

17. *Venison*, tho' not Tithable it self, may yet be given in lieu of Tithes. *Ibid.* 138.

18. Of Hunting, Fishing or Fowling, if for Pleasure only, no Tithes are due.

19. *Contra*, where they are exercised as Employments for Profit.

20. But even in that Case, I conceive the Tithe is to be guided by Custom, and not due of *Common Right*.

A Tithing Table, &c.

21. See for this *The Law of Tithes*, 101 to 110, 128 to 136.

22. And for Tithes of Parks, Warrens, &c. *Ibid.* 18, 106, 107, 128, 135, 138, 207, 227, 229.

23. For Tithes of Dove-houses, Fish-ponds, &c. See the following Section.

SECT.

S E C T XII.

De Domibus & Molen-
dinis, of Houses and
Mills; and herein of
Out-Houses, Dove-
Houses, Fish-Ponds,
Bee-Hives, &c.

1. **I**T seems clear, That of com-
mon Right, no Tithes are
due for Houses. See *Law of*
Tithes 10, 18, 443, 446.

2. And yet a customary Pay-
ment in lieu of Tithes for
Houses may be good. *Vide Ibid.*

3. But this is said not to be
paid for the House, but for the
Land on which 'tis built. *Ibid.*
18, 445.

4. *i. e.* It shall be intended as
a *Modus* paid for the Land be-
fore the House was built. *Ibid.*

5. And

A Tithing Table, &c.

5. And yet if the House be burnt or destroyed, it seems the *Modus* ceases. *Ergo Quare.*

6. Divers Arguments are urged against paying Tithes for Houses, &c. *Ibid.* 10, 443, 444.

7. *Viz.* Tithes are not to be paid, but only of Things that do (yearly) Increase and Renew.

8. But Houses do not increase, &c. But rather decrease (yearly) in Repairing, &c.

9. And Houses are Matter or Part of the Freehold and Inheritance, &c. *Ibid.* 443.

10. And as 'tis a Rule in Law, That Tithes shall not be paid of the Inheritance, &c. *Ibid.* 444.

11. So no Tithes are due for Rent on Houses or Lands, because knit to the Inheritance. *Ibid.*

12. Also Houses are built for the Safety and Security of Man. *Ib.*

13. And the Parson hath another Benefit thereby, as they advance Trade and Industry. *Ib.*

14. Nor can Husbandry, the Producer of most Tithes, be exercised, &c. without Houses to reside in.

15. And if built for *Pleasure* only, That alone is a sufficient Discharge. *Vide ante.*

16. *Further*, the Decree 38 H. 8. Exempting Houses of Noblemen, &c. from Payment of Rate-Tithes, shews, That by the Common Law, no Tithes are due for Houses. *L. T. 444, 445.*

17. And as I apprehend, the same or stronger Arguments may be used for exempting *Mills* from Tithes.

18. And so of Out-Houses, Dove-Houses, Fish-Ponds, Bee-Hives, &c.

19. But for *Mills* of all *Kinds*, and what Tithes are due or claimed

claimed for them, and by what Law or Right, see and note *Law of Tithes*, p. 16, 19, 116 to 126, 184, 226.

20. For Tithes of Dove-Houses, &c. See there, p. 20, 100, 135 to 138.

21. For Tithes of Fish-Ponds, &c. see there, p. 110, 128 to 136.

22. For Tithes of Bees, and Bee-Hives, see before Sect.— and *Law of Tithes* p. 18, 106, 110, 134.

SECT.

S E C T. XIII.

De Mercatoribus, Artificiis, & Servis; or, *The Profits made by Tradesmen, Artificers and Servants, Innkeepers, &c.*

1. **A**LL these Tithes (as commonly called) of Tradesmen, Artificers and Servants, seem at first to have been only *Free-will Offerings*.

2. But the Frequency of voluntary Acts, made 'em afterwards exacted as a *Duty*, and of *Right*.

3. This appears by the Stat. *Artic. Cleri.* (9 E. 2.) and some other Statutes. See *Law Tithes* III, IIII.

4. And tho' now I take it, they are only paid by way of
I Obla-

Oblations and Offerings. *Vide ibid.*

See *L. T.*
141, & *N.B.*
ib. 113.

5. Yet it appears by the Stat. 2 & 3 Ed. 6. c. 13. Sect. 7 & 8. That all Persons, *viz.* (Merchants, Handycrafts and Faculties,) which by the Laws and Customs ought to pay their Offerings, or personal Tithes, and at such Days as accustomed within four (or 40) Years last past.

6. But some would distinguish between Offerings, and the Tithes above mentioned. *Ibid.*

7. For Offerings, say they, are only those small Sums usually given (voluntarily) at *Easter, Whitsontide, &c.*

8. Whereas the Tithes intended by the Act, are the tenth Part of the clear Profits by honest Labour, Art or Industry, &c. See *L. T.* 112.

9. And herein they include all lawful Trades and Occupations whatsoever. *Ibid.*

10. But

10. But not the Profits made by unlawful Employments.

11. As those of a Robber, Usurer, Harlot, &c. See *Degg* 341, &c.

12. Yet if such Robber, &c. purchase Lands, &c. with his Profits, Tithes shall be paid of those Lands.

13. But by the Statute *supra*, common Day-Labourers are exempted from paying such Tithes. *L. T.* 114.

14. And by the Common Law, no Servants in Husbandry were to pay Tithes of their Wages. *Ibid.*

15. Nor can it be thought reasonable to pay 'em for other Servants Wages.

16. Nor shall Tithes be paid of an Inkeeper's Gains. See *L. T.* 45, 104, 115, and 139, &c. as may be also urged of other Professions.

17. And with Respect to these, and most other personal Tithes, I think fit here to caution the Clergy of this Kingdom, against too strict a Demand.

18. For, as Sir S. Degg has very truly remarked, *He Decima personales magis difficultate & subtilitate quam utilitate existunt.* Degg 342.

19. And if such Claims are too eagerly press'd, it may give Occasion to revive that unlucky Question, *An Decima tolli possunt?* Which so very much perplexed that fam'd Canonist and Civilian Rebuff; and which no Judgment or Power on Earth, (but the Legislature) can resolve. See Peter Rebuff, in his *Tract of Tithes*, Question 13.

F I N I S.

4 AP 65

